

SCR Chapter 20 Rules of Professional Conduct for Attorneys

SCR 20:1.0 Terminology.

(ag) "Advanced fee" denotes an amount paid to a lawyer in contemplation of future services, which will be earned at an agreed-upon basis, whether hourly, flat, or another basis. Any amount paid to a lawyer in contemplation of future services whether on an hourly, flat or other basis, is an advanced fee regardless of whether that fee is characterized as an "advanced fee," "minimum fee," "nonrefundable fee," or any other characterization. Advanced fees are subject to the requirements of SCR 20:1.5, SCR 20:1.15(b)(4) or (4m), SCR 20:1.15(e)(4)h., SCR 20:1.15(g), and SCR 20:1.16(d).

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(dm) "Flat fee" denotes a fixed amount paid to a lawyer for specific, agreed-upon services, or for a fixed, agreed-upon stage in a representation, regardless of the time required of the lawyer to perform the service or reach the agreed-upon stage in the representation. A flat fee, sometimes referred to as "unit billing," is not an advance against the lawyer's hourly rate and may not be billed against at an hourly rate. Flat fees become the property of the lawyer upon receipt and are subject to the requirements of SCR 20:1.5, SCR 20:1.15(b)(4) or (4m), SCR 20:1.15(e)(4)h., SCR 20:1.15(g), and SCR 20:1.16(d).

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(mm) "Retainer" denotes an amount paid specifically and solely to secure the availability of a lawyer to perform services on behalf of a client, whether designated a "retainer," "general retainer," "engagement retainer," "reservation fee," "availability fee," or any other characterization. This amount does not constitute payment for any specific legal services, whether past, present, or future and may not be billed against for fees or costs at any point. A retainer becomes the property of the lawyer upon receipt, but is subject to the requirements of SCR 20:1.5 and SCR 20:1.16(d).

The following Comment to SCR 20:1.0 (dm) is not adopted, but will be published and may be consulted for guidance in interpreting and applying the Wisconsin Rules of Professional Conduct:

Wisconsin Comment

The definition of flat fee specifies that flat fees "become the property of the lawyer upon receipt." Notwithstanding, the lawyer must either deposit the advanced flat fee in trust until earned, or comply with the alternative in SCR 20:1.15(b)(4m), alternative protection for advanced fees. In addition, as specified in the definition, flat fees are subject to the requirements of all rules to which advanced fees are subject.